IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

Crl.MC.No. 2709 of 2007()

[CRIME NO.360/06 OF KUMBLA POLICE STATION]

PETITIONER: ACCUSED:

B.M. UMMER BEARY, AGED 26 YEARS,
S/O. IBRAHIM BEARY, MUNDIATHAR HOUSE,
BALLAL VILLAGE, BALTHANGADY TALUK,KARNATAKA STATE.

BY ADV. SRI.T.MADHU

RESPONDENTS: COMPLAINANT & STATE:

THE STATION HOUSE OFFICER,
KUMBLA POLICE STATION, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.KAMAPPU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2709 of 2007

Dated this the 5th day of September 2007

O R D E R

The petitioner faces allegations under Section 302 I.P.C. He was arrested on 29/12/2006. He continues in custody from that date.

2. As the final report was not submitted within the stipulated period, the petitioner was granted bail by default as per order dated 16/4/2007 subject to the following conditions:

"i) He shall execute the with two solvent sureties with solvency certificate of Rs.1,00,000/- each.

ii) He shall appear before the investigation officer twice in a week i.e. in every Monday and Friday in between 10 a.m and 11 a.m until further orders.

iii) He shall not commit any offence when he is on bail.

iv) He shall not leave the jurisdiction of the court without obtaining permission from the court."

3. Though a period of about five months has elapsed from the date of order granting bail, the petitioner has not been able to take advantage of the order granting bail to him

inasmuch as he has not been able to secure two sureties with solvency certificate of Rs.1,00,000/-. The petitioner, therefore, is compelled to languish in judicial custody even now. He was arrested on 29/12/2006 and bail was ordered to be granted to him on 16/4/2007. In spite of that, the petitioner continues in custody even now.

4. According to the learned counsel for the petitioner, the first condition that the petitioner must produce two sureties who have solvency certificates to show that they are solvent to the extent of Rs.1,00,000/- is the condition which makes it impossible for the petitioner to avail of the benefit of the order granting bail. The petitioner therefore moved the learned Magistrate for modification of the said condition. The learned Magistrate, by Annexure A1 order, rejected the said petition. The petitioner approached the learned Sessions Judge. But the learned Sessions Judge, by the impugned order (produced as Annexure A3) also turned down the challenge.

5. The petitioner has, in these circumstances, come to this court with the prayer that the said onerous condition may be deleted and the petitioner may be directed to be released on bail if he produces solvent sureties without insisting on production of

solvency certificates. If such condition were permitted to remain, the petitioner will languish in custody until the trial is over. The sessions case has not been numbered even yet, it is submitted.

6. Having considered all the relevant inputs, I am certainly of the opinion that the insistence on production of solvency certificates by the sureties can be dispensed with. It can be directed that the sureties can produce any document or material to show that they are sufficient and solvent. It is not necessary to rigidly and ritualistically insist on production of the solvency certificates by the sureties.

7. This petition is accordingly allowed. The said condition - that the sureties must produce solvency certificates of Rs.1,00,000/- each is modified. It is directed that the sureties can produce any documents or materials to instill the requisite satisfaction in the mind of the learned Magistrate. Needless to say, in the peculiar facts and circumstances of this case, the learned Magistrate must scrupulously insist that the sureties offered are sufficient and solvent.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007